



3737

PTO/SB/21 (01-08)  
Approved for use through 04/30/2008. OMB 0651-0031  
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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## TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

Total Number of Pages in This Submission

15

Application Number

09,853,428

Filing Date

May 10, 2001

First Named Inventor

Brainard, George

Art Unit

3739

Examiner Name

Gibson, Roy D.

Attorney Docket Number

### ENCLOSURES (Check all that apply)



Fee Transmittal Form



Fee Attached



Amendment/Reply



After Final



Affidavits/declaration(s)



Extension of Time Request



Express Abandonment Request



Information Disclosure Statement



Certified Copy of Priority Document(s)



Reply to Missing Parts/  
Incomplete Application



Reply to Missing Parts  
under 37 CFR 1.52 or 1.53



Drawing(s)



Licensing-related Papers



Petition



Petition to Convert to a  
Provisional Application



Power of Attorney, Revocation



Change of Correspondence Address



Terminal Disclaimer



Request for Refund



CD, Number of CD(s) \_\_\_\_\_



Landscape Table on CD



After Allowance Communication to TC



Appeal Communication to Board  
of Appeals and Interferences



Appeal Communication to TC  
(Appeal Notice, Brief, Reply Brief)



Proprietary Information



Status Letter



Other Enclosure(s) (please identify  
below):

Check in the amount of \$525.00

Check in the amount of \$300.00

return postcard

Remarks

### SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name

Wenger Law Offices

Signature

Printed name

Patricia A. Wenger

Date

April 29, 2008

Reg. No.

42,218

### CERTIFICATE OF TRANSMISSION/MAILING

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below:

Signature

Typed or printed name

Patricia A. Wenger

Date

April 29, 2008

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PTO/SB/17 (10-07)

Approved for use through 06/30/2010. OMB 0651-0032

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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Effective on 12/08/2004.

Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).

# FEE TRANSMITTAL

## For FY 2008

☒ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$) 325.00

**Complete if Known**

Application Number	09/853,428
Filing Date	May 10, 2001
First Named Inventor	Brainard, George
Examiner Name	Gibson, Roy D.
Art Unit	3739
Attorney Docket No.	

**METHOD OF PAYMENT (check all that apply)**☒ Check ☐ Credit Card ☐ Money Order ☐ None ☐ Other (please identify): \_\_\_\_\_☐ Deposit Account Deposit Account Number: \_\_\_\_\_ Deposit Account Name: \_\_\_\_\_

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

☐ Charge fee(s) indicated below ☐ Charge fee(s) indicated below, except for the filing fee  
☐ Charge any additional fee(s) or underpayments of fee(s) under 37 CFR 1.16 and 1.17 ☐ Credit any overpayments**WARNING:** Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.**FEE CALCULATION****1. BASIC FILING, SEARCH, AND EXAMINATION FEES**

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	
Utility	310	155	510	255	210	105	
Design	210	105	100	50	130	65	
Plant	210	105	310	155	160	80	
Reissue	310	155	510	255	620	310	
Provisional	210	105	0	0	0	0	

**2. EXCESS CLAIM FEES****Fee Description**

Each claim over 20 (including Reissues)

Fee (\$)	Small Entity Fee (\$)
50	25

Each independent claim over 3 (including Reissues)

210	105
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Multiple dependent claims

370	185
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Total Claims	Extra Claims	Fee (\$)	Fee Paid (\$)
32	- 20 or HP = 12	x 25.00	= 300.00

HP = highest number of total claims paid for, if greater than 20.

Indep. Claims	Extra Claims	Fee (\$)	Fee Paid (\$)
	- 3 or HP =	x	=

HP = highest number of independent claims paid for, if greater than 3.

**3. APPLICATION SIZE FEE**

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$260 (\$130 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets	Extra Sheets	Number of each additional 50 or fraction thereof	Fee (\$)	Fee Paid (\$)
	- 100 =	/ 50 =	(round up to a whole number) x	=

**4. OTHER FEE(S)**

Non-English Specification, \$130 fee (no small entity discount)

Fees Paid (\$)

Other (e.g., late filing surcharge): \_\_\_\_\_

**SUBMITTED BY**

Signature		Registration No. (Attorney/Agent) 42,218	Telephone 610-566-3040
Name (Print/Type)	Patricia A. Wenger		Date April 29, 2008

This collection of information is required by 37 CFR 1.136. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

APPLICATION NO.: 09/853,428 : FILING DATE: May 10, 2001  
ART UNIT: 3739 : EXAMINER: Gibson, Roy Dean  
FIRST NAMED INVENTOR : George Brainard  
TITLE: Photoreceptor System for Melatonin Regulation and Phototherapy

05/08/2008 SDENB0B3 00000013 09853428

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300.00 0P

Honorable Commissioner for Patents  
Alexandria, VA 22313-1450:

**RESPONSE TO OFFICE ACTION DATED OCTOBER 29, 2007, INTERVIEW  
SUMMARIES, AND CLAIM AMENDMENTS**

**I. Interview Summary for Interview on March 26, 2008**

Present were George Brainard, Gena Glickman, Patricia A. Wenger, and Roy D. Gibson. Applicants provided information including a presentation and authoritative references to Examiner to point out that Applicants' claims 1, 2, 5, 11 - 14, 21, and 22 relate to a spectral composition of at least one enhanced spectral region comprising at least one peak of emitted light within the range of 435 - 488 nm. In addition, among other arguments, Applicants pointed out to the Examiner that Gerdt's (6,235,046) invention teaches blocking, rather than emitting, a peak of light at 435 nm. Without accepting that Gerdt teaches blocking light having a peak intensity in the range of 430 - 440 nm, Applicants' further pointed out that Gerdt's invention would teach blocking, rather than emitting, light at the range of 430 - 440 nm, while Applicants' claims 1, 2, 5, 11 - 14, 21, and 22 relate to a spectral composition of at least one enhanced spectral

region comprising at least one peak of emitted light within the range of 435-488 nm. It is Applicants understanding that the Examiner withdrew from his position in the Office Action that Gerdt's invention teaches blocking light having a peak intensity in the range of 425 - 445 nm.

In addition, among other information provided, Applicants provided a presentation and authoritative references to Examiner to point out that Applicants' findings relating to the range of optical radiation relating to the stimulation at least one of the mammalian circadian, photoneural, neuroendocrine or neurobehavioral systems were not expected. It is Applicants' understanding that arguments presented, including those pointing out that the findings were unexpected, overcame the Examiner's rejection that Claim 27 is unpatentable under 35 U.S.C. section 103(a) as being unpatentable over Hegyi (5,235,178) or typical commercial light or exposure meters.

## **II. Interview Summary for Telephone Interview on March 31, 2008**

Examiner made reference to Vreman, et al. U.S. patent number 6,350, 275 in relation to claims 1, 2, 5, 11 - 14, 21, and 22. Applicants pointed out to the Examiner that contrary to Applicants' invention, Vreman, et al. teach mounting the light source on the body of the user. It is Applicants' understanding that the Examiner would be satisfied if Applicants amended claims 1, 2, 5, 11 - 14, 21, and 22, to include the limitation that that the light source is not mounted on the body of the at least one mammal.

## **III. Interview Summary for Telephone Interviews on April 16, 2008 and April 28, 2008**

On April 16, 2008, Examiner made reference to Teicher, et al., U.S. patent number 6,554,439, as prior art in relation to claims 1, 2, 5, 11 - 14, 21, 22 and 27. On

April 28, 2008, Applicants pointed out to the Examiner that Applicants' provisional application, the benefit of which was claimed in the current application, was filed on May 10, 2000; which is prior to the filing date of the Teicher et al., U.S. patent number 6,554,439. As a result, the Examiner will refrain from considering Teicher, et al., U.S. patent number 6,554,439, as prior art.

#### **IV. RESPONSE TO ELECTION/RESTRICTION REQUIREMENT**

On October 3, 2007, Applicant elected claims 1, 2, 5, 11, 12, 13, 14, 21, 22, and 27 for examination without prejudice, and with traverse. Applicant submitted that it would not be a serious burden on the Examiner if the election were not required.

#### **V. CLAIM OBJECTIONS**

The term "peak sensitivity" is not correct, and Applicants have amended the claims to remove the term "peak sensitivity". Applicants do not either agree or disagree with Examiner's assumption relating to the term "peak intensity" as Applicants chose other words in their amendments where "peak sensitivity" was removed.

#### **VI. CLAIM REJECTIONS – 35 USC § 102**

Applicants traverse Examiner's rejection of claims 5, 21, and 22 which were rejected under 35 U.S.C. § 102(e). Applicants currently cancel claims 5, 21 and 22, which Applicants intend to resubmit for further prosecution in a continuation application.

Consistent with Applicants' interview with Examiner on March 26, 2008 and telephone interview of March 31, 2008, Applicants currently: cancel claim 1 that is resubmitted in amended form as claim 31, cancel claim 11 that is resubmitted in amended form as claim 36, and cancel claim 13 that is resubmitted in amended form as claim 38; all of the amendments include the limitation that that the light source is not mounted on

the body of the at least one mammal, and clearly state the limitation of a spectral composition of at least one enhanced spectral region comprising at least one peak of emitted light within the range of 435-488 nm. In addition, claims 2, 12 and 14 are amended to include the limitation that that the light source is not mounted on the body of the at least one mammal, and clearly state the limitation of a spectral composition of at least one enhanced spectral region comprising at least one peak of emitted light within the range of 435-488 nm.

All of the amendments to claims 2, 12, 14 and 31 - 56, other than the amendments to include the limitation that that the light source is not mounted on the body of the at least one mammal, are to better claim example embodiments of the invention and are not narrowing amendments made for reasons related to patentability, such as, overcoming applied art.

Applicants further note that claims 2, 12 and 14 now depend from allowable claims.

Claim 27 has been canceled and rewritten as claims 28 – 30 to better claim example embodiments of the invention and are not narrowing amendments made for reasons related to patentability, such as, overcoming applied art.

## **VII. AMENDMENTS**

Amend the claims as follows: